

**ERS, INC.**

Environmental Remediation Services, Inc
4010 Option Pass, Fort Wayne, Indiana 46818 • 24 Hour (260) 489-7062 - Fax (260) 489-5752

Facsimile Transmittal

To:	Mary Whitehead	From:	Dan White
Company:	Milbank Manufacturing	Phone #:	765 452-5694
Fax #:	765 452-8361	Date:	May 27, 2008
Re:	Service agreement/Credit Ap	# Of pages:	8

Please find attached an ERS Service Agreement (4 pages) and Credit Application (3 pages). Please review the **Service Agreement**, and upon approval, have an authorized representative initial each page and complete and sign page 4, and return all 4 pages via fax to ERS at (260) 489-5752.

Please complete the **Credit Application** and return by FAX also.

Please call if you have any questions.

Thank you,

Confidentiality Note

The documents accompanying this facsimile transmittal sheet may contain information that is confidential and privileged. The information is intended for the use of the individual of entry to whom it is directed. If you are not the intended recipient, be aware that any disclosure, copying, distribution, or use of the contents of the faxed information is prohibited. If you have received this fax in error, please notify us by telephone immediately so that we can arrange for the retrieval of the transmitted documents.

If you do not receive all the pages, please call (260) 489-7062

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**ERS, INC.**

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ERS SERVICE AGREEMENT**Date of Order:** May 27, 2008**Project:** P08-05-240**Client:** Milbank Manufacturing
Address: 1400 East Haven Avenue**Location:** Same**1. Description of Services:** Emergency response to a mercury spill at above referenced location**Estimated Cost:** Time and Materials

The Client authorizes the above-described services and agrees to pay ERS at its current Standard Rates unless agreed upon and written otherwise. Accounts thirty (30) days past due are subject to the Indiana Mechanics Lien Law. The above described services will be provided on a time and materials basis unless agreed upon and written otherwise. The above cost is an estimate only and not a final cost.

GENERAL CONDITIONS**2. Invoices**


Environmental Remediation Services, Inc. (ERS) will submit invoices to Client periodically and a final invoice upon completion of the project. Invoices will show charges for labor, equipment, and materials. Each invoice is due upon receipt and is past-due thirty (30) days from invoice date (Net 30). Client agrees to pay a finance charge of 1 1/2% per month (18% annual percentage rate), or the maximum allowed by law, on past due accounts. Any attorney's fees or other cost incurred in collecting any delinquent amount owed to ERS by Client shall be paid by Client. Any purchases or subcontracted services required in the performance of Client's work will be subjected to a twenty (20) percent handling fee for less than twenty-five hundred (2500) dollars and a fifteen (15) percent handling fee for greater than twenty-five hundred (2500) dollars.

3. Hazardous Substances and Constituents

Client agrees to advise ERS upon execution of this Service Agreement of any hazardous substances or any condition existing in, on, or near the site presenting a potential danger to human health, the environment, or equipment. Client agrees to provide continuing information as it comes available to the attention of Client in the future. By virtue of entering into this Service Agreement or providing services hereunder, ERS does not assume control of or responsibility for the site or the person in charge of the site, or undertake reporting to any federal, state, or local public agencies any conditions at the site that may present a potential danger to public health, safety, or the environment. Client agrees to notify the appropriate federal, state, or local public agencies as required by law, or otherwise disclose, in a timely manner, any information that may be necessary to prevent any danger to health, safety, or the environment. In connection with hazardous waste, Client agrees to the maximum extent permitted by law to defend, hold harmless and indemnify ERS from and against any and all claims and liabilities resulting from:

- a) Client's violation of any federal, state, or local statute, regulation or ordinance relating to the disposal of hazardous substances or constituents;

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Initial 

- b) Client's undertaking or arrangement for the handling, removal, treatment, storage, transportation, or disposal of hazardous substances or constituents found or identified at the site;
- c) Changed conditions or hazardous substances or constituents introduced at the site by Client or third persons before or after the completion of services herein.
- d) Allegations that ERS is an arranger, generator, operator, treater of, storer, or disposer under the Resource Conservation and Recovery Act (RCRA) of 1976 as amended or any other similar federal, state, or local regulation or law.

4. Discovery of Unanticipated Product, Waste, or Hazardous Substances

Product, waste, or hazardous substances may exist at a site where there is no reason to believe they should be present. ERS and Client agree that the discovery of unanticipated product, waste, or hazardous substances constitutes a changed condition mandating a renegotiation of the scope and cost of work or termination of services. ERS and Client agree that the discovery of product, waste, or hazardous substances may make it necessary for ERS to take immediate measures to protect health and safety. Client agrees to compensate ERS for its additional work. Client also recognizes there is a risk that sampling, through an unknown contaminated zone, may result in spread of contamination to an aquifer, underground stream, or hydrous body not previously contaminated and in turn spreading product, waste, or hazardous substances off-site. Client recognizes nothing can be done to prevent such an occurrence because such sampling is a necessary aspect of work which ERS will perform for Client's benefit. Client waves any claim against ERS and agrees to defend, indemnify, and save ERS harmless from any claim or liability for injury or loss of any type arising from ERS's discovery of unanticipated product, waste, or hazardous substances exempting liability arising directly from the negligence of ERS.

5. Right-of-Entry

Unless otherwise agreed in writing, Client will furnish right-of-entry for ERS to perform the scope of work. ERS will take reasonable precautions to reduce damage to property. However, it is understood by Client that in normal course of work, some damage may occur. Client recognizes that it is Client's responsibility to inform the property owner of the discovery of unanticipated or suspected product, waste, or hazardous substances.

6. Contaminated Equipment

All laboratory and field equipment contaminated in performing our services and which cannot be reasonably decontaminated shall become the property and responsibility of Client. All such equipment shall be delivered to Client or, using a manifest signed by Client as the generator, ERS will have such equipment transported to a location selected by Client for final disposal. Client agrees to pay all costs associated with the storage, transportation and disposal of designated equipment. Client agrees to pay the fair market value for any such equipment which cannot reasonably be decontaminated.

7. Utilities and Subsurface Structures

Client agrees to be solely responsible for designating the location of all utility lines and subsurface structures within the property lines of the project site. ERS will not be liable for damage to subsurface structures (pipes, tanks, wires, conduits, etc.) which are not properly located on or off-site.

8. Job Site

Client agrees that contractors and subcontractors engaged by Client will be required by Client to assume sole and complete responsibility for job site conditions during completion of the project, including safety of persons and property. Client further agrees to indemnify and hold ERS harmless from any and all liability in connection with the performance of work during completion of the project, exempting liability arising directly from the negligence of ERS.

9. Additional Work or Changes

Additional work or changes to the agreement may be made in writing by the Client, with our agreement, for which the Client will agree to pay, in addition to the contract price, a price to be agreed upon at the time of the written change. Said written change order must be signed by both parties prior to the commencement of said additional work. Unless

13. Severability

If any part of this Service Agreement is judged illegal, invalid, or unenforceable for any reason, such judgment shall not affect the legality, validity, or enforceability of this Service Agreement as a whole or of any part of this Service Agreement not so judged.

14. Jurisdiction and Venue

Client and ERS agree that this Agreement shall be governed by the laws of the State of Indiana. Any lawsuit arising out of this Agreement, regardless of who files the suit, shall be filed in Allen County, Indiana Circuit or Superior Court.

15. Termination

This Service Agreement shall take effect upon the date of signing and is to continue in effect and govern all transactions between parties until canceled or terminated by either party. It is agreed that either party can, with or without cause, cancel this Service Agreement within ten (10) days written notice to the other party. In the event of termination, Client shall be responsible for payment of services rendered through the date of termination at ERS's current Standard Rates.

By signing below, Client and ERS attest to having read and understood the foregoing terms and conditions and agree to be bound by them.

Environmental Remediation Services, Inc.

Authorized Signature: _____

Printed Name: _____

Title: _____

Date: _____

Client: Milbank MFG

Authorized Signature: Mary E. Whitehead

Printed Name: MARY E. WHITEHEAD

Title: HR. Manager

Date: 5-27-08

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otherwise specifically agreed, payments for the additional work shall be due in full upon the completion of the original contract.

10. Reports

Client will furnish or cause to be furnished such reports, data, studies, plans, specifications, documents and other information deemed necessary by ERS for proper performance of our services. ERS may rely upon Client provided documents in performing the services required under this agreement; however, ERS assumes no responsibility or liability for their accuracy. Client-provided documents will remain the property of Client. All documents, including but not limited to drawings, specifications, reports, boring logs, field notes, laboratory test data, calculations and estimates, prepared by ERS as instruments of service pursuant to this Service Agreement, shall be the sole property of ERS. Client agrees that all documents of any nature furnished to Client or Client's agents or designees, if not paid for, will be returned upon demand and will not be used by Client for any purpose whatsoever. Client further agrees that under no circumstances shall any documents produced by ERS pursuant to this Service Agreement be used at any location or for any project not expressly provided for in this Service Agreement without the prior written permission of ERS. If Client uses all or any portion of ERS's work on another project without our prior written permission, Client shall to the maximum extent permitted by law save ERS harmless from any and all claims arising from such unauthorized reuse. Further, no part of any document ERS delivers to Client shall be reproduced or distributed, whether for advertising or any other purpose, without our prior written consent. Any such reproduction or distribution shall be at Client's sole risk and without liability or legal exposure to ERS.

11. Warranty

Professional services provided by ERS will be performed, findings obtained, and recommendations prepared in accordance with generally accepted scientific and engineering principles and practices. There are no other warranties, expressed or implied. ERS shall not be responsible for any damages resulting from the work performed under the proposal, or for the failure of materials supplied in connection with the proposal, whether such damages are direct, indirect or consequential, unless caused by the negligence of ERS.

In the event that any third party brings suit or claim for damages against ERS alleging exposure to or damage from material, elements or constituents at or from Client's facility before, during, or after the services of this Service Agreement, which is alleged to have resulted in or caused disease or any adverse health condition to any third party or resulting in cost for remedial action, uninhabitability of the property, or other property damage, and were not caused by the negligence of ERS, then: Client agrees to defend ERS in any such suit or claim and pay on our behalf, any judgment resulting against ERS, including any interest thereon. Further, Client with our concurrence will select, hire and pay an attorney to defend any such suit or claim, will pay Court cost for which ERS may be liable in any such suit and will bear and pay litigation expenses client incurs in providing a reasonable and professional defense which will be provided by client according to prevailing local standards. Client will have the right to investigate, negotiate and settle, with our concurrence, any such suit or claim, and ERS will cooperate in the defense of any such suit or claim.

Client recognizes that site conditions may vary from those encountered in borings, and explorations and that information and recommendations developed by ERS are based solely on the information available to it. An exploration, survey, and analysis associated with the work will be performed by ERS solely to fulfill the purpose of this Service Agreement. ERS is not responsible for the interpretations by others of the information developed.

Client agrees to limit our liability under the above standard care to the Client and all parties claiming under or through the Client on the project arising from professional acts, errors or omissions, to an amount not to exceed \$50,000.00 or our applicable limits of liability insurance in force, whichever is greater.

12. Whole Agreement and Disputes

This agreement and the documents attached hereto and which are incorporated herein constitute the entire Service Agreement between the parties and cannot be changed except by written instrument signed by both the parties. Client agrees that no other terms and conditions, understandings, or purchase orders may modify, vary, or supplement this Service Agreement without the authorized written consent of both parties.

Initial 

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ERS APPLICATION FOR CREDIT

Client Name _____

Date _____

Billing Address _____

City _____ State _____ Zip _____

Billing Contact _____

Telephone _____ Fax _____

Years in Business _____ # of Employees _____ Corporation Partnership Proprietorship (Circle One)

NAME OF CORPORATE OFFICERS-OWNERS-PARTNERS

Name _____ Title _____

Name _____ Title _____

NAME AND ADDRESS OF PARENT COMPANY IF SUBSIDIARY

Name _____

Address _____

City _____ State _____ Zip _____

Telephone _____

BANK Account No. _____

Type: Checking Loan Savings
(Circle One)

Bank Name _____

Officer Name _____

Address _____

City _____ State _____ Zip _____

Filename: g:\ERS credit.doc

Revision Date: February 13, 2003

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INSURANCE Company _____

Address _____

City _____ **State** _____ **Zip** _____

Telephone _____ **Contact** _____

Policy No. _____ **Claim No.** _____

Will invoice be processed as an insurance claim or will client pay invoice direct? _____
(Insurance coverage does not release client from payment terms responsibility.)

PURCHASE ORDER REQUIREMENTS: P.O. Required? Yes No (Circle One)

If P.O. not required, list individuals authorized to purchase or license creative services.

Name _____ **Title** _____

Name _____ **Title** _____

REFERENCES: List three firms where credit is established

Name _____

Address _____

City _____ **State** _____ **Zip** _____

Telephone _____ **Fax** _____

Name _____

Address _____

City _____ **State** _____ **Zip** _____

Telephone _____ **Fax** _____

Name _____

Address _____

City _____ **State** _____ **Zip** _____

Telephone _____ **Fax** _____

Signature authorizes the release of credit information from references and authorizes release of information to the Insurance Company listed. Applicant's signature attests to financial responsibility, ability and timeliness to pay invoices. Actual terms are specified on Estimate/Service Agreement/Contract forms accompanying all jobs and projects.

Signature _____ Title _____

Printed Name _____ Date _____

Phone # to be reached if questions: _____